IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 16661 of 2007()

PETITIONER:

V.SOOSAMMA, HIGH SCHOOL ASSISTANT (MALAYALAM), ST.JOHN'S MODEL HIGHER SECONDARY SCHOOL, NALAMCHIRA, THIRUVANANTHAPURAM.

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.ANIL K.NAIR
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN
SRI.PRAMJI PAUL VAZHAPPILLY

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANATHAPURAM.

2. THE DIRECTOR OF PUBLIC INSRTRUCTIONS, THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIONAL OFFICER, THIRUVANANTHAPURAM.

4. THE HEADMASTER, ST.JOHN'S MODEL HIGHER SECONDARY SCHOOL, NALAMCHIRA, THIRUVANANTHAPURAM.

5. THE CORRESPONDENT, M.S.C.SCHOOLS, PATTOM, THIRUVANANTHAPURAM.

BY GOVT.PLEADER SRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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W.P(C) No. 16661 of 2007

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Dated this the 1st day of June, 2007.

J U D G M E N T

Petitioner is presently working as HSA (Malayalam) in the school under the management of respondent No.5.

2. It is beyond controversy that petitioner had started her career as Junior Sanskrit Teacher (part-time) in the school, way back in the year 1981. Petitioner admits that she is a graduate in Sanskrit with Malayalam as additional language. She obtained Post Graduate degree in Sanskrit and passed B.Ed degree examination also. According to the petitioner her appointment was as Junior Sanskrit Teacher approved by the Controlling Officer and she was promoted as full time Junior Sanskrit Teacher in the year 1985 which appointment was also approved.

3. It appears that petitioner was promoted as HSA (Malayalam) in a short term vacancy in December 1988. Thereafter she was appointed in a regular vacancy in March 1989 and she has been continuing as HSA (Malayalam) eversince. Learned counsel points out that in Ext.P1 communication dated December 9, 1987 the Government had clarified that the qualification possessed by the petitioner was sufficient enough to promote her as HSA (Malayalam). But in the year 1990 Government issued Ext.P2 order taking the view that the appointment of the petitioner as HSA (Malayalam) having been made on the basis of a wrong clarification, she would be entitled to get salary and other benefits attached to the said post till she holds the post. It was further ordered that petitioner

would be reverted as Sanskrit teacher when the next vacancy of Sanskrit teacher arises.

4. Presumably in response to a communication received from the Departmental Officer on the basis of some objection raised by the audit, the management sent Ext.P3 communication in July 2005 informing that there was no vacant post of High School Assistant (Sanskrit) or Language Teacher (Full Time) in the school under its management to accommodate the petitioner. It was further stated that petitioner would be reverted as Full Time Sanskrit Teacher as and when a vacancy arises in the school. In Ext.P4 communication dated January 4, 2006 the District Educational Officer, informed the Manager that the petitioner may be allowed to continue as HSA (Malayalam) and she may be granted senior grade scale of UPSA with effect from the date she completed 18 years service as Full Time Junior Sanskrit Teacher and HSA put together, as ordered in the relevant Government orders dated January 18, 1991 and November 30, 2004. The said communication has been produced as Ext.P4..

5. By Ext.P5 communication dated March 23, 2007, respondent No.3 the District Educational Officer, Thiruvananthapuram directed the Manager to inform whether the petitioner had been reverted as Language Teacher (Sanskrit). The Manager was directed to with-hold salary of the petitioner with immediate effect. This writ petition has been filed challenging Ext.P5 order contending inter alia that such an order is totally illegal and unwarranted.

6. It is the case of the petitioner that the Manager in Ext.P3 communication had undertaken to accommodate the petitioner in a

post of Junior Language Teacher as and when such a vacancy arises. The fact that the management had not issued such an order indicates that no vacancy had arisen so far. It is also contended by the learned senior counsel that the Department does not have a case that such a post exists under the management to accommodate the petitioner.

7. Anyhow, I do not propose to deal with the above and other contentions raised by the petitioner . I have narrated the entire scenario only to indicate the fact that petitioner had been working as a Teacher for nearly 2 decades. She is a Post Graduate with teaching qualification. It is true that she has got the benefit to continue in service on the basis of the earlier orders issued by the Government. Be that as it may, the short question that arises for consideration is whether such a drastic step as indicated in Ext.P5 should have been taken by the Department at this juncture, and that too without notice to the petitioner. Her salary has been withheld without any prior intimation. Learned Senior counsel submits that all these aspects have been highlighted by the petitioner in Ext.P6 representation. The limited prayer is to issue a direction to respondent No.1 to take an appropriate decision on Ext.P6.

8. In the above facts and circumstances the writ petition is disposed of with a direction to respondent No.1 to consider and pass orders on Ext.P6 strictly on its merit and accordance with law, as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment. Needless to mention that the petitioner and the Manager of the institution where the petitioner is now working shall be afforded sufficient opportunity to be heard

before any orders are passed. Pending decision on Ext.P6, the operation and implementation of Ext.P5 shall be kept in abeyance.

Petitioner shall produce a certified copy of the judgment along with a copy of the writ petition before respondent No.1 for compliance.

A.K. Basheer
Judge.

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